PHILIPPINES

TRADE SUMMARY

In 1999, the U.S. trade deficit with the Philippines was nearly $5.2 billion, a decrease of $59 million from the U.S. trade deficit of just over $5.2 billion in 1998. U.S. merchandise exports to the Philippines were $7.2 billion, an increase of $490 million (7.3 percent) from the level of U.S. exports to the Philippines in 1998. The Philippines was the United States' 21st largest export market in 1999. U.S. imports from the Philippines were $12.4 billion in 1999, an increase of $431 million (3.6 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in the Philippines in 1998 was $3.2 billion, a 3.1 percent decline from the level of U.S. FDI in 1997. U.S. FDI in the Philippines is concentrated largely in the manufacturing and financial sectors.

IMPORT POLICIES

Tariffs

Imported manufactured items that are not locally produced generally face low tariffs, while imports that compete with locally-produced goods face higher tariffs of up to 30 percent. Under the Philippine Government's comprehensive tariff reform program, set out in Executive Orders (E.O.) 264 and 288, applied MFN tariff rates for all items except sensitive agricultural products are to be gradually reduced to the following target rates: three percent for raw materials by January 2003; 10 percent for finished products by January 2003; and a uniform five percent tariff rate for all other products by January 2004. While the Philippines has indicated that it remains committed to these reduced tariff levels, the Government in 1998 and 1999 made extensive changes to the incremental rate reduction schedule set out in E.O. 264 for the period 1998-2000. The Government is currently examining the schedule with a view to implementing additional tariff rate changes beyond 2000.

In response to requests from import-sensitive industry sectors (including the petrochemicals, garment and apparel, rubber, steel, and forest product industries) the Philippines revised the rate reduction schedule for a number of product categories in 1998 and 1999. E.O. 465 and E.O. 486, which took effect January 21 and July 7, 1998, respectively, implemented a more gradual rate reduction schedule for many items, higher rates for some tariff headings (garments, textiles, certain petrochemicals, ammunition, and unfinished automotive vehicles imported in kit form), and lower rates on other headings, including some agricultural products. For other tariff lines, E.O. 465 and E.O. 486 retained 1997 duty rates in 1998, or postponed until 1999/2000 reductions in duties originally scheduled for 1998.

In September 1998, the Estrada Administration agreed to consider requests by import-sensitive manufacturers for selected tariff increases, setting aside a policy of waiting at least 12 months following changes to rates before initiating any review of those new rates. E.O. 63, signed in January 1999, raised tariff rates on 714 tariff lines. The main changes of interest to U.S. companies include increases in the MFN applied tariff rates on yarns, threads, fabric, apparel, and kraft liner paper. Higher rates on these products were originally imposed in January 1998 by E.O. 465 for one year only; however, E.O. 63 extended these rates through 1999. Rates on these items returned to 1997 levels on January 1, 2000.

Imports of finished automotive vehicles (completely built-up units) are subject to the highest duty rate applied to non-agricultural products, as an incentive to promote local assembly under the Philippines' Motor Vehicle Development Program. The rate was reduced from 40 to 30 percent on January 1, 2000. E.O. 465, signed in 1998, increased tariffs on completely-knocked down (CKD) automotive vehicle imports from seven percent in 1998 to 10 percent in 1999 and 2000.

Agriculture Tariffs and Import Licensing

The Philippines maintains high tariff rates on sensitive agricultural products, including certain grains, livestock and meat products, sugar, certain vegetables, and coffee. Examples include feed grains, particularly corn (at an in-quota rate of 35 percent, 65 percent out-of-quota rate since January 1, 1999), sorghum (from 15 percent since January 1, 1999 to 10 percent beginning January 1, 2000) potatoes (in-quota rate of 45 percent, 60 percent out-of-quota rate since January 1, 1999), and fresh and chilled beef (from 20 percent since January 1, 1999 to 10 percent starting January 1, 2000).

Fifteen tariff lines of agricultural commodities (at the 4-digit HS level) are subject to minimum access volume (MAV) tariff-rate quotas (TRQs). Products covered by these TRQs include live animals, fresh, chilled and frozen pork, poultry meat, goat meat, potatoes, coffee, corn, and sugar. Administrative Order (A.O.) 9 of 1996, as amended by A.O. 8 of 1997 and A.O. 1 of 1998, established the rules by which these TRQs are implemented and import licenses are allocated. The United States had been concerned that the TRQs for pork and poultry meat were administered in a manner which allocated a vast majority of import licenses to domestic producers who had no interest in importing. Following intensive consultations, the Governments of the United States and the Philippines concluded a Memorandum of Understanding (MOU) in February 1998 which resolved the United States' primary concerns over the Philippine TRQ system. An examination of the distribution of licenses in 1999 reveals that implementation of the reforms embodied in the MOU are gradually shifting import licenses from licensees not utilizing their licenses to active importers. Operation of the Philippines' TRQ system and the allocation and distribution of import licenses continues to be closely monitored by the United States.

Section 61 of the Philippine Fisheries Code, Republic Act (R.A.) 8550 permits importation of fresh, chilled, or frozen fish and fish products only when certified as necessary by the Secretary of Agriculture and upon issuance of an import permit by the Department of Agriculture. Fisheries Administrative Order (FAO) 195, Series of 1999, issued by the Department of Agriculture on September 20, 1999, implements Section 61. One of the criteria the Secretary is mandated to consider in determining whether to approve importation is whether "there is serious injury or threat of injury to domestic industry that produces like or directly competitive products."

Excise Tax on Distilled Spirits

Current Philippine law (Sections 141-143 of R.A. 8424 and Revenue Regulation 17-99) has the effect of discriminating against many imported distilled spirits by subjecting them to a higher excise tax than the rates applied to many common domestic spirits. Distilled spirits produced from indigenously available materials (such as coconut palm, cane, and certain root crops) are subject to a specific tax of 8.96 pesos per proof liter. Distilled spirits produced from other raw materials (which would apply to most imports) are subject to a specific tax ranging from 84 pesos to 336 pesos per proof liter (depending on net retail price per 750 ml bottle). Still wines with an alcohol content of 14 percent or less by volume are assessed an excise tax of 13.44 pesos per liter while still wines with an alcohol content greater than 14 percent but less than 25 percent alcohol content by volume are charged an excise tax of 26.88 pesos per liter. Fortified wines (containing greater than 25 percent alcohol content) are taxed as distilled spirits. Depending on the net retail price per bottle, an excise tax of 112 pesos or 336 pesos per liter is assessed on sparkling wines.

Excise Tax on Automotive Vehicles

The excise tax rate for automotive vehicles is based on engine displacement, as opposed to vehicle value. This system imposes a competitive disadvantage on imported vehicles with larger engine displacement, including many U.S. exports. Current tax rates for motor vehicles with gasoline engines are: 15 percent for engines up to 1600 cubic centimeters (cc); 35 percent for those with engines between 1601-2000cc; 50 percent for those between 2001-2700cc; and 100 percent for those 2701cc and above. For motor vehicles with diesel engines, excise rates are 15 percent for engines of up to 1800cc; 35 percent for those 1801-2300cc; 50 percent for those 2301-3000cc; and 100 percent for those 3001cc and above.

Quantitative Restrictions

The Philippines retains quantitative restrictions on rice imports. The minimum access volume (quota) for rice was 111,994 metric tons for 1999 and is 119,460 metric tons for 2000. The country is expected to import considerably more, due to harvest shortfalls. Rice continues to be imported solely by the National Food Authority, although the Department of Agriculture, on a trial basis, allowed the private sector to import a small volume of premium rice in early 1999. The United States continues to urge the Philippines to consider eliminating the quantitative restriction on rice in the context of the mandated WTO agriculture negotiations.

Other Import Restrictions

The Philippines maintains import restrictions on a range of products. Imports of used automotive vehicles remain subject to government review and approval. Effective April 15, 1999, the National Telecommunications Commission (NTC) requires cellular telephone service providers or authorized equipment dealers to obtain an import certification prior to importation of handsets for satellite-based cellular phones.

Philippine regulations generally require that any firm importing coal also purchase locally produced coal. While importers in the past were required to buy one unit of local coal for every unit of imported coal, the Department of Energy sometimes provides some flexibility to importers.

The United States has protested a June 3, 1998 Order from the Office of the President, which has the effect of prohibiting the importation and sale of certain cast-iron hubless pipe, until such time as certain regulations are amended to explicitly permit its use.

Customs Barriers

The Philippine Government retains the services of a private company to perform preshipment invoice inspection, invoice price verification/valuation as part of the customs clearance procedures for most imports arriving in the Philippines. Aspects of these procedures, including physical pre-shipment inspection, are conducted in the country of exportation, as a condition for importation to the Philippines. The contract between the Philippine Government and the private company for performance of inspection services expired on December 31, 1999, but was extended through March 31, 2000. On December 20, 1999, President Estrada signed E.O. 188, creating an interagency committee to develop and conduct an international tender for a new contract for unspecified preshipment inspection and other customs services. However, no decision has been taken, and in early March 2000 officials stated that the preshipment inspection regime would expire effective April 1.

As a policy matter, the United States has repeatedly expressed concerns that the Philippine Government prioritize improving the administration of its customs regime, rather than retain a private, for-profit company to carry out vital customs clearance and revenue collection functions ordinarily maintained by governmental authorities. Moreover, as a commercial matter, the United States has repeatedly reiterated to the Philippine Government that certain actions by the private entity and its agents constitute import harassment which, in many cases, have had the effect of creating trade impediments which may conflict with Philippine obligations under the WTO Agreement on Preshipment Inspection (PSI). These abuses include failure to comply with basic transparency requirements under the WTO Agreement on Preshipment Inspection (PSI), and arbitrary and unjustified increases or "uplifts"of the invoice value of imports, often on the basis of inappropriate or questionable information. There are periodic reports of other procedural irregularities such as requests by customs officials for the payment of (unrecorded) "facilitation" fees which are not related to the cost of services rendered.

Under the current PSI regime, most imports valued at more than U.S. $500 are permitted entry only when accompanied by a "Clean Report of Findings" (CRF) issued by the private PSI entity at the point of export. However, U.S. exporters report that many of the basic procedural requirements under the WTO PSI Agreement related to transparent and efficient customs procedures are not consistently maintained, resulting in valuation and clearance problems when shipments arrive in the Philippines. Refrigerated products and most products destined for export-processing zones are exempt. Certain goods require mandatory preshipment inspection in the country of export. This preshipment inspection requirement extends to imports into certain operations in free-trade zones.

The appeals process for considering grievances by importers seeking to challenge decisions by the private entity lacks transparency. The current process also perpetuates an inappropriate conflict of interest, as representatives of the private company serve in an ex-officio capacity on the appellate board reviewing the complaints filed against the company's conduct. Moreover, the appeals process can be time consuming. Importers that pursue an appeal must first pay duties on the uplifted valuation in order to obtain release of the shipment in question, or have the shipment impounded pending the outcome of the appeal, with storage costs to be borne by the exporter or importer.

With the end of the transition period available to developing countries, the Philippines was obligated to implement the "transaction value" method of customs valuation on January 1, 2000, in accordance with obligations under the WTO Agreement on Customs Valuation. While the existing valuation law (R.A.8181) includes a provision requiring that the Bureau of Customs publish reference values that "shall be binding on importers and the Bureau of Customs until changed," new implementing regulations are silent on this issue. Legislation to remove this provision is pending in the Philippine Congress.

In valuation and other areas, a 1997 memorandum of understanding between the Bureau of Customs and two Philippine industry associations creates formal channels for local private industry, including firms which produce goods that compete with imports, to influence valuation and other customs clearance procedures. Regulations issued in October 1998 further institutionalized the ability of local firms to seek upward adjustments in customs valuation of imported products. In view of the lapse of the deadline for implementation of the Agreement on Customs Valuation, the WTO-consistency of the Bureau of Customs procedures under the 1997 memorandum and subsequent regulations will be closely scrutinized.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Industrial Goods

Local inspection for standards compliance is required for 75 products subject to mandatory Philippine national standards, including cosmetics, medical equipment, lighting fixtures, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For goods not subject to mandatory standards, U.S. manufacturers' self-certification of conformance is accepted. Labeling is mandatory for textile fabrics, ready-made garments, household and institutional linens, and garment accessories. Mislabeling, misrepresentation, or misbranding may subject the entire shipment to seizure and disposal. The "Generic Act" of 1988 aims to promote the use of generic drugs by requiring that the generic name of a particular pharmaceutical must appear above its brand name on all packaging.

Agricultural Goods

The Philippine Department of Agriculture has established plant health regulations, which allow the import of U.S. apples, grapes, oranges, potatoes, onions, and garlic, provided these products do not originate from Florida or Texas. A protocol was recently negotiated to allow the importation of Florida grapefruit, oranges and tangerines into the Philippines. Similar protocols are being negotiated for a range of other fruits and vegetables, including cherries, broccoli, lettuce, and cauliflower.

The Philippine Government's zero tolerance policy for methanol in wine products has posed a concern for exporting alcohol industries. This policy requires that a manufacturer's report on the manufacturing process be submitted to the Philippine Bureau of Food and Drug (BFAD) for evaluation.

GOVERNMENT PROCUREMENT

The Philippines is not a signatory of the WTO Government Procurement Agreement (GPA). Contracts for government procurement are awarded by competitive tender. Preferential treatment of local suppliers is practiced in government purchases of pharmaceuticals, rice, corn, and iron/steel materials for use in government projects, and in locally-funded government consulting requirements. Contractors for infrastructure projects that require a public utility franchise (i.e., water and power distribution, telecommunications, and transport systems) must be at least 60 percent Filipino-owned. For other major contracts (such as Build-Operate-Transfer projects) not involving a public utility franchise, a foreign contractor must be duly accredited by its government to undertake construction work.

Executive Order 120, dated August 19, 1993, mandates a countertrade requirement for procurements by government agencies and government-owned or controlled corporations that entail the payment of at least U.S. $1 million in foreign currency. Implementing regulations issued by the Department of Trade and Industry set the level of countertrade obligations of the foreign supplier at a minimum of 50 percent of the import price, and provide for penalties for non-performance of countertrade obligations. The implementing agency for countertrade transactions is the Philippine International Trading Corporation.

EXPORT SUBSIDIES

Enterprises and exporters engaged in activities under the Government's "Investment Priorities Plan" may register with the Board of Investments (BOI) for fiscal incentives, including four to six year income tax holidays; a tax deduction equivalent to 50 percent of the wages of direct-hire workers; and tax and duty exemptions for the importation of breeding stocks and genetic materials. BOI-registered firms that locate in less-developed areas may be eligible to claim a tax deduction of up to 100 percent of outlays for infrastructure works and 100 percent of incremental labor expenses. Firms in government-designated export processing zones, free trade zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA) enjoy basically these same incentives, plus tax and duty-free importation of capital equipment and raw materials, and exemption from preshipment inspection. In lieu of national and local taxes, PEZA-registered firms are subject to a five percent tax on gross income. Firms which earn at least 50 percent of their income from exports may register with BOI or PEZA for certain tax credits under the Export Development Act, including a tax credit on incremental annual export revenue. Legislation is pending to restore a tax credit for imports of raw material or components not readily available locally, which expired on December 31, 1999.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Significant problems remain in ensuring the consistent and effective protection of intellectual property rights (IPR). A new intellectual property code (R.A. 8293), which took effect January 1, 1998, improves the legal framework for IPR protection in the Philippines. It provides enhanced copyright and trademark protection; creates a new Intellectual Property Office (IPO), with authority to resolve certain disputes concerning licensing; increases penalties for infringement and counterfeiting; and relaxes provisions requiring the registration of licensing agreements. Passage of the law was called for under a 1993 bilateral U.S.-Philippine agreement to strengthen protection of intellectual property rights in the Philippines.

Deficiencies in R.A. 8293 remain a serious concern. These included, *inter alia*, a provision permitting the decompilation of software programs as "fair-use," subject to certain restrictions; the lack of clear provisions for *inaudita altera parte* relief in civil cases as required by Article 50 of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS); ambiguous provisions on the rights of copyright owners over broadcast, rebroadcast, cable retransmission, or satellite retransmission of their works; and burdensome restrictions affecting licensing contracts. Some provisions of R.A. 8293, while nominally in force, are currently unavailable to rights holders because of continued organizational delays at the IPO. These include the right to pursue cases against IPR violators using the IPO's administrative complaint provisions. Legislation is pending in the Philippine Congress to provide IPR protection for plant varieties and layout-designs of integrated circuits, in line with WTO obligations that became mandatory on January 1, 2000.

Despite the creation in February 1993 of the Presidential Interagency Committee on Intellectual Property Rights (PIAC-IPR) to coordinate enforcement oversight and program implementation, serious problems continue to hamper the effective operation of agencies tasked with IPR enforcement. Resource constraints, already a problem, have been exacerbated by general governmental budgetary shortfalls, but joint efforts between the private sector and the National Bureau of Investigation (NBI), Philippine Customs and the Videogram Regulatory Board have resulted in some successful enforcement actions. Judicial unwillingness to impose meaningful penalties and sentences remains a stumbling block to more aggressive use of the courts to deter IPR violations. The designation of 48 courts to handle IPR violations has done little to streamline the judicial proceedings in this area, as these courts have not received additional resources and continue to handle a heavy non-IPR workload. Because of the lengthy nature of court action, many cases are settled out of court. The Philippines remains on the Special 301 Watch List.

The Philippine Government is a party to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty; it is also a member of the World Intellectual Property Organization, although it has not yet signed the WIPO treaties on copyright and performance rights/phonograms. The Philippines is a Member of the World Trade Organization, and utilized the transition period available to developing countries to delay implementation of the TRIPS Agreement until January 1, 2000.

Patents

R.A. 8293 mandates a first-to-file system, increases the term of patents from 17 to 20 years, provides for the ability to patent microorganisms and non-biological and microbiological processes, and gives patent holders the right of exclusive importation of his invention. A compulsory license may be granted in some circumstances, including if the patented invention is not being worked in the Philippines without satisfactory reason, although importation of the patented article constitutes working or using the patent. Legislation has been introduced in the Philippine House of Representatives which, if enacted, would curtail many rights and would shorten the term of patent protection.

Trademarks

R.A. 8293 no longer requires prior use of trademarks in the Philippines as a requirement for filing a trademark application. The law also eliminates the requirement that well-known marks be in use in Philippine commerce or registered with the Government. Trademark counterfeiting remains widespread in the Philippines.

Copyright

R.A. 8293 expands IPR protection by clarifying protection of computer software as a literary work (although it includes a fair-use provision on decompilation of software), establishing exclusive rental rights in several categories of works and sound recordings, and providing terms of protection for sound recordings, audiovisual works, and newspapers and periodicals that are compatible with the WTO TRIPS Agreement. Implementing regulations on copyright were issued by the National Library in August 1999 and address some deficiencies in the law, but significant concerns remain. As noted above, these include the lack of clear provisions for *inaudita altera parte* (*ex-parte*) relief for copyright owners in civil cases, and ambiguities concerning exclusive rights for copyright owners over broadcast and retransmission. Ratification by the Philippines of the Berne Convention (Paris Act) in June 1997 effectively ended the longstanding government practice of authorizing local publishers to reprint foreign textbooks without permission of the foreign copyright holder. However, legislation has been introduced in the Philippine House of Representatives which would permit the unrestricted reproduction of copyrighted works, including computer software, by educational institutions. According to aggregated industry statistics, the total annual trade loss resulting from copyright piracy in the Philippines in 1999 is estimated at about $115 million.

U.S. industry reports that software piracy remains widespread, with total annual trade losses from piracy in 1999 estimated at about $27 million for business software and about $24 million for entertainment software. The Philippine Government has stated its commitment to eliminate the use of pirated software within government agencies, pursuant to Memorandum Circular 115, which orders government agencies to use only licensed, legitimate software. Software vendors believe compliance, though improved, remains uneven. Despite positive, intensified cooperation with the Bureau of Customs and the Videogram Regulatory Board and actions by the NBI, U.S. distributors report continued high levels of unauthorized retail sale and distribution of audio and visual material, and unauthorized transmissions of motion pictures and other programming on cable systems. Enforcement officials, working with industry, raided two illegal optical disk (OD) production facilities in September and October 1999, confiscating several million dollars worth of equipment and inventory. The National Telecommunications Commission has undertaken new efforts to address infringement by some cable operators. Philippine courts have been reluctant to impose substantial penalties, which would serve as a deterrent for infringement; often, penalties consist only of the seizure and confiscation of the video cassettes or optical discs used in the unauthorized cable broadcast. Delays in the issuance of warrants are a problem and arrests are infrequent. It remains to be seen whether the tougher penalties contained in R.A. 8293 will enhance enforcement. The U.S. motion picture industry estimates annual losses due to audiovisual piracy in the Philippines amounted to $18 million in 1999.

Licensing of Technology

The Intellectual Property Office requires that all technology transfer arrangements comply with provisions outlined in R.A. 8293, including the prohibition of the use of certain clauses in such arrangements. The scope of these provisions is extremely broad and serves to obstruct the normal contracting process between unrelated parties or as part of intra-company business. Technology transfer arrangements are defined as contracts involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts, and the transfer, assignment or licensing of all forms of intellectual property rights, including computer software except for software developed for mass market.

SERVICES BARRIERS

The Philippines is long overdue in ratifying both the Fourth Protocol to the WTO General Agreement on Trade in Services (GATS), embodying its obligations under the WTO Basic Telecommunications Agreement, and the Fifth Protocol to GATS, embodying its obligations under the WTO Finance Services Agreement. Details concerning the Philippine government's obligations in these areas are discussed below.

Basic Telecommunications

The Philippine Constitution (Section 11 of Article XII) limits foreign ownership of telecommunications firms to 40 percent. During the WTO negotiations on basic telecommunications services, the Philippines made commitments on most basic telecommunications services and adopted some pro-competitive regulatory principles contained in the WTO Reference Paper. The Philippines did not provide market access or national treatment for satellite services, and made no commitment regarding resale of leased circuits/closed user groups.

Financial Services

Insurance: Although current practice permits up to 100 percent foreign ownership in the insurance sector in 1997, the Philippines only committed to a WTO binding at a maximum of 51 percent equity participation. However, it grandfathered the status of existing insurers with more than 51 percent foreign equity. As a general rule, only the state-owned government insurance system may provide coverage for government-funded projects. A 1994 administrative order extended this policy to public-private Build-Operate-Transfer (BOT) projects. Private insurance firms, both domestic and foreign, regard this as an important trade barrier. Current regulations require all insurance/professional reinsurance companies operating in the Philippines to cede to the industry-owned National Reinsurance Corporation of the Philippines (NRCP) at least 10 percent of outward reinsurance placements.

Banking: May 1994 legislation permitted 10 foreign banks to open full-service branches in the Philippines. A foreign bank may also own up to 60 percent of a new or existing local subsidiary, although the Philippines only bound foreign ownership at 51 percent in its 1997 WTO financial services offer and included a reciprocity test for authorization to establish a commercial presence. Legislation is pending in the Philippine Congress to permit foreign banks to acquire 100 percent of local banks experiencing financial problems. Foreign branch banks are limited to six branches each. Four foreign-owned banks that had been operating in the Philippines prior to 1948 were each allowed to open up to six additional branches. Current regulations mandate that majority Filipino-owned domestic banks should, at all times, control at least 70 percent of total banking system assets.

Securities and Other Financial Services: Membership in the Philippine Stock Exchange (PSE) is open to foreign-controlled stock brokerages that are incorporated under Philippine laws. Foreign equity in trust management firms is limited to 40 percent, and in securities underwriting companies to 60 percent. Securities underwriting companies not established under Philippine law may underwrite Philippine issues for foreign markets, but not for the domestic market. Although there are no foreign ownership restrictions governing acquisition of shares of mutual funds, current law restricts membership in the board of directors to Philippine citizens. The Philippines took an MFN exemption on foreign equity participation in securities firms, stating that Philippine regulators would approve applications for foreign equity only if Philippine companies enjoy similar rights in the foreign investor's country of origin.

Advertising

The Philippine Constitution (Section 11 of Article XVI) limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers of advertising agencies must be Philippine citizens.

Public Utilities

The Philippine Constitution (Section 11 of Article XII) specifically limits the operation of public utilities (i.e., water and sewage, electricity, telecommunications) to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises must be Philippine citizens.

Practice of Professions

As a general rule, the Philippine Constitution (Section 14 of Article XII) reserves the practice of licensed professions (e.g., law, medicine, nursing, accountancy, engineering, architecture, customs brokerage, etc.) to Philippine citizens. Philippine law (R.A. 8182) also requires that preference be given to Philippine citizens in the hiring of consultants and other professionals necessary for the implementation of projects funded by foreign assistance. Legislation signed in February 1998 (R.A. 8555) gives the President of the Philippines the authority to waive this and other preferences applicable to the procurement of goods and services funded with foreign assistance.

Shipping

The Maritime Industry Authority prohibits foreign flagged vessels from engaging in the provision of domestic carriage services. The country's bareboat chartering laws stipulate that Philippine flagged vessels should be manned by Filipino crew and disallows foreign crew/officers, except as supernumeraries.

Express Delivery Services

Foreign air express couriers and airfreight forwarding firms must either contract with a wholly-owned Philippine business to provide delivery services, or establish a domestic company with a minimum of 60 percent Philippine-owned equity.

INVESTMENT BARRIERS

The 1991 Foreign Investment Act (FIA) contains two “negative lists” that outline areas where foreign investment is restricted. The restrictions stem from a Constitutional provision, Section 10 of Article VII, which permits the Philippine Congress to reserve to Philippine citizens certain areas of investment. The scope of these lists were updated by E.O. 11, signed August 11, 1998.

“List A” covers activities in which foreign equity is excluded or limited by the Constitution or other laws. No foreign investment is permitted in mass media (including cable television operators), processing of corn and rice, small-scale mining, and private security agencies. In addition to land ownership (where a 40 percent foreign equity ceiling applies), foreign ownership limitations cover advertising (30 percent), recruitment (25 percent), financing (60 percent), securities underwriting firms (60 percent), public utilities (40 percent), education (40 percent), the operation of deep sea commercial fishing vessels (40 percent), public works (25 percent, except for projects covered by the government’s build-operate-transfer program and those that are foreign-funded, where 100 percent foreign equity is permitted), and the exploration and development of natural resources (40 percent).

“List B” limits foreign ownership (generally to 40 percent) for reasons of public health, safety, morals, or national security. To protect small and medium-sized domestic enterprises, this list also restricts foreign ownership to no more than 40 percent in non-export-related firms capitalized at less than U.S.$200,000. The Philippine Congress in February 2000 enacted legislation to open the retail trade sector to foreign investment, subject to stringent conditions, including a high minimum capitalization requirement, a divestment requirement, and local sourcing requirements.

The Philippines generally imposes a foreign ownership ceiling of 40 percent on firms seeking incentives with the Board of Investments (BOI) under the annual investment priorities plan. While there are exceptions to the ceiling, divestment to reach the 40 percent level is required within 30 years, or longer as allowed by the BOI. As a general policy, the Philippine Department of Labor and Employment allows the employment of foreigners provided there are no qualified Philippine citizens that can fill the position. However, the employer must train Filipino understudies and report on such training periodically. The positions of elective officers (i.e., president, general manager and treasurer) are exempt from the labor market test and understudy requirements.

Trade-Related Investment Measures

In 1995, pursuant to the WTO Agreement on Trade-Related Investment Measures (TRIMS), the Philippines notified the maintenance of local content and foreign exchange balancing requirements to promote investment in the motor vehicle assembly and detergent industries. Proper notification allowed developing-country WTO members to maintain such measures for a five-year transitional period, ending January 1, 2000. In October 1999, the Philippines requested a five-year extension for the measures in the motor vehicle sector. The United States is working with other WTO members to review all pending TRIMS extension requests on a case-by-case basis, with an effort to ensure that the individual needs of those countries that have made requests can be addressed. This process does not limit a Member's rights under the WTO Agreement.

The Board of Investments imposes industry-wide local content requirements under its Motor Vehicle Development Program, and requires participants to generate, via exports, a certain percentage of the foreign exchange needed for import requirements. Local content requirements in the autos sector are based on a point system, which translates to 40 percent for passenger cars and 45 percent for commercial vehicles of less than three tons.

The Car Development Program requires an investment of $10 million in parts and components manufacturing for export and domestic markets as a mandatory step to establish a vehicle assembly facility ($8 million for trucks/commercial vehicles). Under Memorandum Order (MO) 473 of April 1998 manufacturers can reduce the local content requirement if they export at least $200 million a year. The Board of Investment may grant a local content offsetting scheme in which foreign exchange can replace up to 50 percent of local content, provided that the foreign exchange is twice the value of local content replaced. This measure authorizes the BOI to create a mandatory parts list as part of the local content requirement for manufacturers.

The notified measure in the chemicals/detergents sectors (Executive Order 259) requires that soap and detergents contain at least 60 percent coconut-based surface active agents, implicitly requiring local sourcing by soap and detergent manufacturers. No extension request was made in regard to these measures.

In addition to the requirements notified under the WTO TRIMS Agreement, the United States continues to monitor other measures. Regulations governing the provision of tax incentives impose a higher export performance for foreign-owned enterprises (70 percent of production should be exported) than for Philippine-owned companies (50 percent). Legislation passed by the Philippine Congress in February 2000 requires that foreign retailers, for the first 10 years after the bill's enactment, source at least 30 percent (for retail enterprises capitalized at no less than $2.5 million) and 10 percent (for retail enterprises specializing in luxury goods) of their inventory, by value, in the Philippines. In addition, there appear to be unwritten "trade balancing" requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation (AICO) scheme.

ELECTRONIC COMMERCE

Electronic transactions are not presently subject to any discriminatory trade restrictions or tax measures. At present, electronic documents do not have legal recognition in the Philippines. Legislation is pending in the Philippine Congress to give electronic documents legal standing.

OTHER BARRIERS

The Revised Penal Code, Anti-Graft and Corrupt Practices Act, and Code of Ethical Conduct for public officials are in place and are intended to combat suspected corruption and related anti-competitive business practices. The Office of the Ombudsman investigates cases of alleged graft and corruption involving public officials. The "Sandiganbayan" (anti-graft court) prosecutes and adjudicates cases filed by the Ombudsman.

In spite of these government mechanisms directed at combating suspected corruption, widespread anecdotal evidence suggests that graft remains a serious problem at many levels in all branches of the Philippine Government. In its 1999 survey of public perceptions of corruption in 99 countries, a non-governmental organization gave the Philippines a score of 3.6 (10 being the perfect corruption-free score), ranking the Philippines at twentieth place in terms of the perceived level of corruption. The U.S. Embassy and the American Chamber of Commerce in Manila have in the past successfully represented U.S. business interests in cases where U.S. firms seemed to be disadvantaged due to reportedly questionable bid/award or other government proceedings.